

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**FILED**

JUN 18 2007

CLERK'S OFFICE  
U. S. DISTRICT COURT  
EASTERN MICHIGAN

FRANK JOHNSON,  
Petitioner,

v.

Criminal Case No: 90-80355  
Civil Case No: 05-73343  
Hon. Anna Diggs Taylor

UNITED STATES OF AMERICA,  
Respondent.

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**MEMORANDUM OPINION AND ORDER**

Petitioner has filed a Motion to Correct and/or Amend Sentence pursuant to Federal Rules of Criminal Procedure, Rule 36. In his petition, he requests that this court add an additional day to his sentence. For the reasons set forth below, Petitioner's motion must be DENIED.

**I.**

On September 14, 2006, Petitioner appeared before this court for various alleged violations of his supervised release. At the hearing, Petitioner admitted guilt to all violations and this court imposed a custodial sentence of 12 months. Additionally, the court recommended that Petitioner be placed in a 500 hour Residential Drug Abuse Treatment Program (RDAP).

Petitioner now seeks, pursuant to Rule 36 of the Federal Rules of Criminal Procedure, to correct "an oversight and error" that he argues this court made when he was sentenced. Specifically, Petitioner asserts that an additional day should be added to his sentence because he is being treated twice a month for alcohol abuse and is scheduled to be transferred to "CCC placement (halfway house)" on July 17, 2007. Although not stated in Petitioner's motion, it appears that he is requesting

that the additional day be added to his sentence to facilitate completion of his current substance abuse treatment program.

## II.

### *Rule 36*

Rule 36 under the Federal Rules of Criminal Procedure provides:

After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.

The Sixth Circuit has held that Rule 36, “authorizes a court to correct only clerical errors in the transcription of judgments, not to effectuate its unexpressed intentions at the time of sentencing.” *U.S. v. Carr*, 421 F.3d 425, 432-433 (6<sup>th</sup> Cir. 2005).

In the instant case, Petitioner has requested that this court alter his sentence pursuant to Rule 36 but has failed to give the court any basis for the requested modification. Indeed, Petitioner has not cited any clerical errors in the transcript or in this court’s Order executing its judgment. Consequently, Petitioner’s motion must be denied.

For the foregoing reasons,

IT IS ORDERED that Petitioner’s Motion to Correct And/or Amend Sentence Pursuant to Federal Rule of Criminal Procedure, Rule 36, is hereby DENIED.

IT IS SO ORDERED.

  
ANNA DIGGS TAYLOR  
UNITED STATES DISTRICT JUDGE

DATED: **JUN 18 2007**

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail (**Frank Johnson, #14030-039, P.O. Box 350, FCI-Beckley, Beaver, WV 25813**) disclosed on the Notice of Electronic Filing on June 18, 2007.